

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6775 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SALBATSINGH MULABHAI PATEL

Versus

DESK OFFICER

Appearance:

1. Special Civil Application No. 6775 of 2001
MR VM DHOTRE for Petitioner No. 1
MR MUKESH R SHAH for Respondents No. 1
MR DIPAK A THAKER for Respondents No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 24.8.2000 (Annexure "C") passed by the Government of India in the Ministry of Labour rejecting the

petitioner's application for referring the dispute sought to be raised by the petitioner for reinstatement on his original post in the Telecom Department alongwith continuity of service and with full backwages and other benefits.

2. The petitioner had submitted application dated 27.8.1999 (Annexure "A") pointing out that he had joined as a casual labour (Lineman) on full time basis in the Railway Electrification Division of the Telecom Department in Banaskantha district in October, 1984 and that the petitioner had served the Telecom Department on continuous basis from 1.10.1984 to 10.10.1995. According to the petitioner, during the aforesaid period he worked at Baroda, Nadiad and lastly at Deesa. The petitioner made a grievance against the oral termination of the petitioner's services from 11.10.1995 without following the procedure. The petitioner had further stated that when he had gone to the Telephone Exchange, Deesa as well as Palanpur between 1996 and 1998 for making inquiries regarding his appointment, the petitioner was informed that the petitioner's case was sent to the Department of Telecommunications at New Delhi for approval.

In response to the above application, the Department of Telecommunications, Government of India through its Divisional Engineer (Admn.) submitted a reply, inter alia, pointing out that prior to 1995 there was an abnormal work for a specific period in the Telecom Department. There were so many old technology exchanges existing in the department which were required to be scrapped by replacing new electronic exchanges. This involved laying of underground cables at many places requiring employment of a large number of casual labour. However, thereafter due to completion of such casual work, the casual labours were retrenched from the department after completing all the necessary formalities under the Industrial Disputes Act, 1947. It was further pointed out in the reply that the petitioner was engaged for the following periods :-

Year	No. of days
1991	157
1993	73
1994	177
1995	184

591

These figures were given in Annexure "A" to the reply given by the Telecom Department. It was further stated that the petitioner was engaged since 1981 in the

Telecom Department at Palanpur and that no other records of the petitioner's working in other Telecom Departments were available with the office. It was further stated in the reply that no person junior to the petitioner was reinstated. It was further contended that as per the decision of the Hon'ble Supreme Court in Civil Appeal No. 1568 of 1997 decided on 17.2.1997 a daily wage was not entitled for regularization in the department.

Since the conciliation proceedings failed before the Conciliation Officer, failure report dated 18.7.2000 was sent by the Conciliation Officer. After considering the same, the Government of India in the Ministry of Labour decided that it was not a fit dispute for adjudication for the following reasons :-

"It is reported that the workman has not worked for 240 days in the preceding 12 months. He is not entitled for any protection under the ID Act."

It is the aforesaid communication dated 24.8.2001 at Annexure "C" to the petition which is under challenge in this petition.

3. Mr VM Dhotre, learned counsel for the petitioner has submitted that it was the petitioner's case that he was in employment of the Telecom Department since October, 1984 and that he had worked from 1.10.1984 to 10.10.1995 at the Railway Electrification Divisions of Baroda, Nadiad and Deesa Telegraph Office/Telephone Exchange. Hence, the Government of India in the Ministry of Labour did not have complete details about the number of days on which the petitioner had worked because the Government chose to rely only on the figures given by the Officer at Palanpur and not at all considered the number of days for which the petitioner had worked in other divisions or in Deesa division itself. The primary contention of the learned counsel for the petitioner is that whether there was any dispute regarding number of days for which the petitioner had worked in the Telecom Department in the past was a matter to be resolved by the Labour Court or the Industrial Court and it was not for the Government of India to decide whether the petitioner had completed 240 days service in a year or not and whether the petitioner was entitled to get any protection under the Industrial Disputes Act or not. The learned counsel for the petitioner has heavily relied on the decision of this Court in Kantilal Bhovanbhai Butani vs. Union of India, 2001(1) GLR 639.

4. On the other hand, Mr MR Shah, learned Addl. Standing Counsel for respondent No.1-Government of India in the Ministry of Labour and Mr Dipak A Thaker, learned advocate appearing for the Telecom Department have opposed the petition and submitted that when the petitioner had no prima facie case, the Government was justified in rejecting the application for reference.

At the hearing of the petition, it has further been contended on behalf of the respondents that there was delay of about four years on the part of the petitioner in raising the demand and, therefore also, the application for reference deserved to be rejected.

5. Having heard the learned counsel for the parties, it appears to the Court that as far as the second ground is concerned, the impugned order dated 24.8.2000 at Annexure "C" to the petition indicates that the only ground on which the application for reference was rejected was that the Government of India in the Ministry of Labour merely relied on the case of the District Manager at Deesa that the petitioner had not worked for 240 days in the preceding 12 months. Delay was not the ground on which the application for reference came to be rejected. In para 6 of the application for reference, the petitioner has pointed out the facts explaining the time gap between 1996 and 1998 and since the petitioner was informed that his case was sent to the Department of Telecommunications at New Delhi for approval, the petitioner had waited but when inspite of inquiry nothing was moving, the petitioner approached the Government in August, 1999 with the aforesaid demand. It appears to the Court that the time gap between the date of termination and the date of demand is explained by the petitioner and the Government of India itself did not reject the application on the ground of delay while passing the impugned order dated 24.8.2000. Hence, the Court is not inclined to accept the belated submission coming on behalf of the respondents about the delay in making the application for reference.

6. As far as the first ground is concerned, there is considerable substance in the submission made by the learned counsel for the petitioner that when the petitioner had gone with the specific case that the petitioner had worked at different divisions like Baroda, Nadiad and Deesa and when the reply (Annexure "C") was filed only by the General Manager, Telecom District, Palanpur which includes Deesa District, the Government of India ought not to have proceeded on the basis of the reply given by only one office when the petitioner's case

about his having worked at different places was not disputed by the department. The petitioner claims to have led the evidence in support of his case that the petitioner had worked as a casual labour (Lineman) on full time basis for Railway Electrification Division work from October 1984 till October, 1995. It was, therefore, not open to the Government of India to reject the petitioner's application by assuming the power of adjudication and that too without having the necessary data before it. In case of dispute about the number of days or the period for which the petitioner had worked, it was for the Labour Court to decide the controversy on the basis of the evidence to be led before it. The learned counsel for the petitioner has, therefore, rightly relied on the decision of this Court in Kantilal Bhovanbhai Butani vs. Union of India, 2001(1) GLR 639 laying down that when there is an industrial dispute, the Government is bound to refer the dispute for adjudication and that the Government itself cannot decide whether termination was in accordance with law.

8. In view of the above discussion, the petition is allowed. The impugned order dated 24.8.2000 (Annexure "C" to the petition) is hereby quashed and set aside. Respondent No. 1 is directed to refer the dispute raised by the petitioner to the appropriate forum in accordance with law.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-